

COLORADO WILDERNESS ACT OF 1991

JULY 30 (legislative day, JULY 8), 1991.—Ordered to be printed

Mr. JOHNSTON, from the Committee on Energy and Natural Resources, submitted the following

REPORT

[To accompany S. 1029]

The Committee on Energy and Natural Resources to which was referred the bill (S. 1029), to designate certain lands in the State of Colorado as components of the National Wilderness Preservation System, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Colorado Wilderness Act of 1991".

SEC. 2. ADDITIONS TO THE WILDERNESS PRESERVATION SYSTEM.

(a) ADDITIONS.—The following lands in the State of Colorado are hereby designated as wilderness and, therefore, as components of the National Wilderness Preservation System:

(1) certain lands in the Gunnison Basin Resource Area administered by the Bureau of Land Management which comprise approximately 1,470 acres, as generally depicted on a map entitled "American Flats Additions to the Big Blue Wilderness—Proposal", dated May 1991, and which are hereby incorporated in and shall be deemed to be a part of the Big Blue Wilderness designated by Public Law 96-560;

(2) certain lands in the Gunnison Basin Resource Area administered by the Bureau of Land Management which comprise approximately 140 acres, as generally depicted on a map entitled "Larson Creek Addition to the Big Blue Wilderness—Proposal", dated May 1991, and which are hereby incorporated in and shall be deemed to be a part of the Big Blue Wilderness designated by Public Law 96-560;

(3) certain lands in the Pike and San Isabel National Forests which comprise approximately 40,150 acres, as generally depicted on a map entitled "Buffalo

Peaks Wilderness—Proposal", dated May 1991, and which shall be known as the Buffalo Peaks Wilderness;

(4) certain lands in the Gunnison National Forest and in the Bureau of Land Management Powderhorn Primitive Area which comprise approximately 60,100 acres as generally depicted on a map entitled "Powderhorn Wilderness—Proposal", dated May 1991, and which shall be known as the Powderhorn Wilderness;

(5) certain lands in the Routt National Forest which comprise approximately 17,300 acres, as generally depicted on a map entitled "Davis Peak Additions to the Mount Zirkel Wilderness Proposal", dated May 1991, and which are hereby incorporated in and shall be deemed to be a part of the Mount Zirkel Wilderness designated by Public Law 88-555;

(6) certain lands in the San Isabel National Forest which comprise approximately 22,040 acres as generally depicted on a map entitled "Greenhorn Mountain Wilderness—Proposal", dated May 1991, and which shall be known as the Greenhorn Mountain Wilderness;

(7) certain lands in the Grand Mesa, Uncompahgre, and Gunnison National Forests which comprise approximately 32,000 acres as generally depicted on a map entitled "Fossil Ridge Wilderness Proposal", dated May 1991, and which shall be known as the Fossil Ridge Wilderness Area;

(8) certain lands within the Pike and San Isabel National Forests which comprise approximately 13,830 acres, as generally depicted on a map entitled "Lost Creek Wilderness Proposal", dated May 1991, which are hereby incorporated in and shall be deemed to be a part of the Lost Creek Wilderness designated by Public Law 96-560: *Provided*, That the Secretary of Agriculture (hereinafter in this Act referred to as the "Secretary") is authorized to acquire, only by donation or exchange, various mineral reservations held by the State of Colorado within the boundaries of the Lost Creek Wilderness additions designated by this Act;

(9) certain lands in the Grand Mesa, Uncompahgre, and Gunnison National Forests which comprise approximately 5,000 acres, as generally depicted on a map entitled "Oh-Be-Joyful Addition to the Raggeds Wilderness—Proposal", dated May 1991, and which are hereby incorporated in and shall be deemed to be a part of the Raggeds Wilderness designated by Public Law 96-560;

(10) certain lands in San Juan National Forest which comprise approximately 56,000 acres, as generally depicted on a map entitled "Piedra Wilderness", dated July, 1991 and which shall be known as the Piedra Wilderness;

(11) certain lands in the Grand Mesa, Uncompahgre, and Gunnison National Forests which comprise approximately 18,000 acres, as generally depicted on a map entitled "Roubideau Wilderness—Proposal", dated May 1991, and which shall be known as the Roubideau Wilderness;

(12) certain lands in the Rio Grande National Forest which comprise approximately 207,330 acres, as generally depicted on a map entitled "Sangre de Cristo Wilderness—Proposal", dated May 1991, and which shall be known as the Sangre de Cristo Wilderness;

(13) certain lands in the Routt National Forest which comprise approximately 44,000 acres, as generally depicted on a map entitled "Service Creek Wilderness Proposal", dated May 1991, which shall be known as the Sarvis Creek Wilderness: *Provided*, That the Secretary is authorized to acquire by purchase, donation, or exchange, lands or interests therein within the boundaries of the Sarvis Creek Wilderness only with the consent of the owner thereof;

(14) certain lands in the San Juan National Forest which comprise approximately 15,920 acres as generally depicted on a map entitled "South San Juan Expansion Wilderness—Proposal", (V-Rock Trail and Montezuma Peak), dated May 1991, and which are hereby incorporated in and shall be deemed to be a part of the South San Juan Wilderness designated by Public Law 96-560;

(15) certain lands in the White River National Forest which comprise approximately 8,330 acres, as generally depicted on a map entitled "Spruce Creek Additions to the Hunter-Fryingpan Wilderness—Proposal", dated May 1991, and which are hereby incorporated in and shall be deemed to be a part of the Hunter-Fryingpan Wilderness designated by Public Law 95-327: *Provided*, That no right, or claim of right, to the diversion and use of the waters of Hunter Creek, the Fryingpan or Roaring Fork Rivers, or any tributaries of said creeks or rivers, by the Fryingpan-Arkansas Project, Public Law 87-590, and the reauthorization thereof by Public Law 93-493, as modified as proposed in the September 1959 report of the Bureau of Reclamation entitled "Ruedi Dam and Reservoir, Colorado," and as further modified and described in the description of the proposal contained in the final environmental statement for said project,

dated April 16, 1975, under the laws of the State of Colorado, shall be prejudiced, expanded, diminished, altered, or affected by this Act. Nothing in this Act shall be construed to expand, abate, impair, impede, or interfere with the construction, maintenance, or repair of said Fryingpan-Arkansas Project facilities, nor the operation thereof, pursuant to the Operating Principles, House Document 187, Eighty-third Congress, and pursuant to the water laws of the State of Colorado: *And provided further*, That nothing in this Act shall be construed to impede, limit, or prevent the use by the Fryingpan-Arkansas Project of its diversion systems to their full extent;

(16) certain lands in the Arapaho National Forest which comprise approximately 7,630 acres, as generally depicted on a map entitled "St. Louis Peak Wilderness—Proposal", dated May 1991, and which shall be known as Byers Peak Wilderness;

(17) certain lands in the Grand Mesa, Uncompahgre, and Gunnison National Forests and in the Bureau of Land Management Montrose District which comprise approximately 16,740 acres, as generally depicted on a map entitled "Tabeguache Wilderness—Proposal", dated May 1991, and which shall be known as the Tabeguache Wilderness;

(18) certain lands in the Arapaho National Forest which comprise approximately 12,300 acres, as generally depicted on a map entitled "Vasquez Peak Wilderness—Proposal", dated May 1991, and which shall be known as Vasquez Peak Wilderness;

(19) certain lands in the San Juan National Forest which comprise approximately 28,740 acres, as generally depicted on a map entitled "West Needle Wilderness and Weminuche Wilderness Addition—Proposal", dated May 1991, and which are hereby incorporated in and shall be deemed to be a part of the Weminuche Wilderness designated by Public Law 93-632;

(20) certain lands in the Rio Grande National Forest which comprise approximately 23,100 acres, as generally depicted on a map entitled "Wheeler Additions to the La Garita Wilderness—Proposal", dated May 1991, and which shall be incorporated into and shall be deemed to be a part of the La Garita Wilderness;

(21) certain lands in the Arapaho National Forest which comprise approximately 12,100 acres, as generally depicted on a map entitled "Williams Fork Wilderness—Proposal", dated May 1991, and which shall be known as the Farr Wilderness; and

(22) certain lands in the Arapaho National Forest which comprise approximately 6,400 acres, as generally depicted on a map entitled "Bowen Gulch Additions to Never Summer Wilderness Proposal," dated May 1991, which are hereby incorporated into and shall be deemed to be a part of the Never Summer Wilderness.

(b) **MAPS AND DESCRIPTION.**—As soon as practicable after the date of enactment of this Act, the appropriate Secretary shall file a map and a legal description of each area designated as wilderness by this Act with the Committee on Energy and Natural Resources of the United States Senate and the Committee on Interior and Insular Affairs of the United States House of Representatives. Each map and description shall have the same force and effect as if included in this Act, except that the Secretary is authorized to correct clerical and typographical errors in such legal descriptions and maps. Such maps and legal descriptions shall be on file and available for public inspection in the Office of the Chief of the Forest Service, Department of Agriculture and the Office of the Director of the Bureau of Land Management, Department of the Interior, as appropriate.

SEC. 3. WATER RIGHTS.

(a) **FINDINGS.**—The Congress finds that—

(1) since virtually all of the lands designated as wilderness by this Act lie at the headwaters of streams and rivers that arise on those lands, the designation of these lands as wilderness poses few, if any, conflicts with existing water users in view of the provisions of this Act, and the land management agencies can protect these wilderness lands and their water-related resources without asserting either implied or express reserved water rights;

(2) these particular headwaters areas are not appropriate for new water projects;

(3) while the Piedra Wilderness designated by section 2(a)(10) of this Act is located downstream of numerous State-granted conditional and absolute water rights, the Forest Service can adequately protect the water-related resources of this wilderness area by working in coordination with the Colorado Water Con-

servation Board through a contractual agreement between the Secretary and the Board (as provided in subsection (e) of this section) to protect and enforce instream flow filings established pursuant to the provisions of section 37-92-102(3) of the Colorado Revised Statutes by the Colorado Water Court for Division 7; and

(4) the water-related values of the existing Platte River Wilderness will be adequately protected by the terms of the equitable apportionment decree that the United States Supreme Court has issued for allocation of the waters of the North Platte River and its tributaries.

(b) **WATER RIGHTS.**—(1) Nothing in this Act or any other Act of Congress shall constitute or be construed to constitute either an express or implied reservation of water or water rights arising from—

(A) wilderness designation for the lands designated as wilderness by this Act;

(B) the establishment of the Fossil Ridge National Conservation Area pursuant to section 6 of this Act; or

(C) the establishment of the Bowen Gulch Backcountry Recreation Area pursuant to section 7 of this Act.

(2) The United States may acquire such water rights as it deems necessary to carry out its responsibilities on any lands designated as wilderness by this Act pursuant to the substantive and procedural requirements of the State of Colorado: *Provided*, That nothing in this Act shall be construed to authorize the use of eminent domain to acquire water rights for such lands.

(3) Notwithstanding any other provision of law, no officer of the United States shall authorize or issue a permit for the development of a new water resource facility within the wilderness areas designated by this Act: *Provided*, That nothing in this Act shall affect irrigation, pumping and transmission facilities, and water facilities in existence within the boundaries of such wilderness areas, nor shall anything in this Act be construed to limit operation, maintenance, repair, modification or replacement of existing facilities as provided in paragraph (f) of this section.

(c) **PIEDRA WILDERNESS.**—The Secretary shall enter into an agreement with the Colorado Water Conservation Board to protect and enforce instream flow filings established pursuant to the provisions of section 37-92-102(3) of the Colorado Revised Statutes by the Water Court of Water Division 7 of the State of Colorado, and neither the United States nor any other person shall assert any rights for water in the Piedra River for wilderness purposes except those established pursuant to the provisions of section 37-92-102(3) of the Colorado Revised Statutes by the Water Court of Water Division 7 of the State of Colorado.

(d) **NORTH PLATTE RIVER.**—Notwithstanding the provisions of this Act or any prior Acts of Congress to the contrary, neither the United States nor any other person shall assert any rights which may be determined to have been established for waters of the North Platte River for purposes of the Platte River Wilderness established by Public Law 98-550, located on the Colorado-Wyoming State boundary, to the extent such rights would limit the use or development of water within Colorado by present and future holders of valid water rights in the North Platte River and its tributaries, to the full extent allowed under interstate compact or United States Supreme Court equitable decree. Any such rights shall be junior and subordinate to use or development of Colorado's full entitlement to interstate waters of the North Platte River and its tributaries within Colorado allowed under interstate compact or United States Supreme Court equitable decree.

(e) **INTERSTATE COMPACTS.**—Nothing in this Act shall be deemed to alter, modify, or amend any interstate compact or equitable apportionment decree affecting the allocation of water between or among the State of Colorado and other States nor the full use and development of such waters, and nothing in this title shall affect or limit the use or development by holders of valid water rights of Colorado's full apportionment of such waters.

(f) **ACCESS.**—Reasonable access shall be allowed to existing water diversion, carriage, storage and ancillary facilities within the wilderness areas designated by this Act, including motorized access where necessary and customarily employed on existing routes. The present diversion, carriage and storage capacity of existing water facilities, and the present condition of existing access routes, may be operated, maintained, repaired and replaced as necessary to maintain serviceable conditions: *Provided*, That, unless authorized by applicable statute: (i) the original function and impact of an existing facility or access routes on wilderness values shall not be increased as a result of changes in operation; (ii) existing facilities and access routes shall be maintained and repaired when necessary to prevent increased impacts on wilderness values; and (iii) the original function and impact of existing facilities and

access routes on wilderness values shall not be increased subsequent to maintenance, repair, or replacement.

(g) **PRECEDENTS.**—Nothing in this section shall be construed as establishing a precedent with regard to any future wilderness designations, nor shall it constitute an interpretation of any other Act or any wilderness designation made pursuant thereto.

SEC. 4. ADMINISTRATION OF THE WILDERNESS AREAS.

(a) **IN GENERAL.**—(1) Subject to valid existing rights, each wilderness area designated by this Act shall be administered by the Secretary or the Secretary of the Interior, as appropriate, in accordance with the Wilderness Act (16 U.S.C. 1131 et seq.) and this Act, except that, with respect to any wilderness areas designated by this Act, any reference in the Wilderness Act to the effective date of the Wilderness Act shall be deemed to be a reference to the date of enactment of this Act.

(2) Administrative jurisdiction over those lands designated as wilderness pursuant to paragraphs (1), (2), and (12) of section 2(a) of this Act, and which, as of the date of enactment of this Act, are administered by the Bureau of Land Management, is hereby transferred to the Forest Service.

(b) **GRAZING.**—(1) Grazing of livestock in wilderness areas designated by this Act shall be administered in accordance with the provisions of section 4(d)(4) of the Wilderness Act (16 U.S.C. 1133(d)(4)), as further interpreted by section 108 of Public Law 96-560.

(2) **REVIEW.**—The Secretary of the Interior is directed to review all policies, practices, and regulations of the Bureau of Land Management-administered wilderness areas in Colorado to ensure that such policies, practices, and regulations fully conform with and implement the intent of Congress regarding grazing in such areas as such intent is expressed in this Act.

(c) **STATE JURISDICTION.**—As provided in section 4(d)(7) of the Wilderness Act (16 U.S.C. 1133(d)(7)), nothing in this Act shall be construed as affecting the jurisdiction or responsibilities of the State of Colorado with respect to wildlife and fish in Colorado.

(d) **REPEAL OF WILDERNESS STUDY AND FURTHER PLANNING AREAS STATUS.**—(1) Public Law 96-560 is amended by striking sections 105(c) and 106(b).

(2) Section 2(e) of the Endangered American Wilderness Act of 1978 (92 Stat. 41) is amended by striking "Subject to" and all that follows through "System".

(e) **BUFFER ZONES.**—Congress does not intend that the designation by this Act of wilderness areas in the State of Colorado creates or implies the creation of protective perimeters or buffer zones around any wilderness area. The fact that non-wilderness activities or uses can be seen or heard from within a wilderness area shall not, of itself, preclude such activities or uses up to the boundary of the wilderness area.

SEC. 5. WILDERNESS REVIEW CONCERNS.

(a) **FINDINGS.**—The Congress finds that—

(1) the Department of Agriculture has adequately met the wilderness study requirements of Public Law 96-560, Public Law 95-237, and section 12(g) of Public Law 98-141;

(2) the initial Land and Resource Management Plans and associated environmental impact statements (hereinafter referred to as "land and resource management plans") for the National Forests in the State of Colorado have been completed as required by section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1976;

(3) the Department of Agriculture, with substantial public input, has reviewed the wilderness potential of these and other areas; and

(4) the Congress has made its own examination of National Forest System roadless areas in the State of Colorado and of the environmental impacts associated with alternative allocations of such areas.

(b) On the basis of such review, the Congress hereby determines and directs that—

(1) with respect to the National Forest System lands in the State of Colorado that were reviewed by the Department of Agriculture in wilderness studies conducted pursuant to Public Law 95-237, Public Law 96-560, and section 12(g) of Public Law 98-141, and the initial land and resource management plans, such reviews shall be deemed for the purposes of the initial land and resource management plans required for such lands by the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended by the National Forest Management Act of 1976, to be an adequate consideration of the suitability of such lands for inclusion in the National Wilderness Preservation System and the Department of Agriculture shall not be required to review the wilderness option

prior to the revision of the plans but shall review the wilderness option when the plans are revised, which revisions will ordinarily occur on a 10-year cycle, or at least every 15 years, unless prior to such time the Secretary finds that conditions in a unit have significantly changed;

(2) except as may be specifically provided in sections 6 and 7 of this Act, those areas in the State of Colorado referred to in subparagraph (1) of this subsection which were not designated as wilderness shall be managed for multiple use in accordance with land and resource management plans pursuant to section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended by the National Forest Management Act of 1976: *Provided*, That such areas need not be managed for the purpose of protecting their suitability for wilderness designation prior to or during revision of the initial land and resource management plans;

(3) in the event that revised land and resource management plans in the State of Colorado are implemented pursuant to section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended by the National Forest Management Act of 1976, and other applicable laws, areas not recommended for wilderness designation need not be managed for the purpose of protecting their suitability for wilderness designation prior to or during revision of such plans, and areas recommended for wilderness designation shall be managed for the purpose of protecting their suitability for wilderness designation as may be required by the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended by the National Forest Management Act of 1976, and other applicable law; and

(4) unless expressly authorized by Congress, the Department of Agriculture shall not conduct any further statewide roadless area review and evaluation of National Forest System lands in the State of Colorado for the purpose of determining their suitability for inclusion in the National Wilderness Preservation System.

(c) **REVISIONS.**—As used in this section, and as provided in section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended by the National Forest Management Act of 1976, the term “revision” shall not include an amendment to a plan.

(d) **APPLICATION OF SECTION.**—The provisions of this section shall also apply to those National Forest System roadless lands in the State of Colorado that are less than 5,000 acres in size.

SEC. 6. FOSSIL RIDGE NATIONAL CONSERVATION AREA.

(a) **ESTABLISHMENT.**—(1) In order to conserve, protect, and enhance the scenic, wildlife, recreational, and other natural resource values of the Fossil Ridge area, there is hereby established the Fossil Ridge National Conservation Area (hereinafter referred to as the “conservation area”).

(2) The conservation area shall consist of certain lands in the Grand Mesa, Uncompahgre, and Gunnison National Forests, Colorado, which comprise approximately 43,900 acres as generally depicted as “Area A” on a map entitled “Fossil Ridge Wilderness Proposal”, dated May 1991.

(b) **ADMINISTRATION.**—The Secretary shall administer the conservation area in accordance with this section and the laws and regulations generally applicable to the National Forest System.

(c) **WITHDRAWAL.**—Subject to valid existing rights, all lands within the conservation area are hereby withdrawn from all forms of entry, appropriation, or disposal under the public land laws, from location, entry, and patent under the mining laws, and from disposition under the mineral and geothermal leasing laws, including all amendments thereto.

(d) **TIMBER HARVESTING.**—No timber harvesting shall be allowed within the conservation area except for the minimum necessary to protect the forest from insects and disease, and for public safety.

(e) **LIVESTOCK GRAZING.**—The designation of the conservation area shall not be construed to prohibit, or change the administration of, the grazing of livestock within the conservation area.

(f) **DEVELOPMENT.**—No developed campgrounds shall be constructed within the conservation area. After the date of enactment of this Act, no new roads or trails may be constructed within the conservation area.

(g) **OFF-ROAD RECREATION.**—Motorized travel shall be permitted within the conservation area only on those designated trails and routes existing as of July 1, 1991.

SEC. 7. BOWEN GULCH BACKCOUNTRY RECREATION AREA.

(a) **ESTABLISHMENT.**—(1) There is hereby established in the Arapaho National Forest, Colorado, the Bowen Gulch backcountry recreation area (hereinafter referred to as the "backcountry recreation area").

(2) The backcountry recreation area shall consist of certain lands in the Arapaho National Forest, Colorado, which comprise approximately 6,800 acres as generally depicted as "Area A" on a map entitled "Bowen Gulch Additions to Never Summer Wilderness Proposal", dated May, 1991.

(b) **ADMINISTRATION.**—The Secretary shall administer the backcountry recreation area in accordance with this section and the laws and regulations generally applicable to the National Forest System.

(c) **WITHDRAWAL.**—Subject to valid existing rights, all lands within the backcountry recreation area are hereby withdrawn from all forms of entry, appropriation, or disposal under the public land laws, from location, entry, and patent under the mining laws, and from disposition under the mineral and geothermal leasing laws, including all amendments thereto.

(d) **DEVELOPMENT.**—No developed campgrounds shall be constructed within the backcountry recreation area. After the date of enactment of this Act, no new roads or trails may be constructed within the backcountry recreation area.

(e) **TIMBER HARVESTING.**—No timber harvesting shall be allowed within the backcountry recreation area except for the minimum necessary to protect the forest from insects and disease, and for public safety.

(f) **MOTORIZED TRAVEL.**—Motorized travel shall be permitted within the backcountry recreation area only on those designated trails and routes existing as of July 1, 1991 and only during periods of adequate snow cover. At all other times, mechanized, non-motorized travel shall be permitted within the backcountry recreation area.

(g) **MANAGEMENT PLAN.**—During the preparation of the revision of the Land and Resource Management Plan for the Arapaho National Forest, the Forest Service shall develop a management plan for the backcountry recreation area, after providing for public consultation.

PURPOSE OF THE MEASURE

The purposes of S. 1029, as ordered reported, are to designate approximately 648,620 acres of lands administered by the Forest Service and the Bureau of Land Management in the State of Colorado as components of the National Wilderness Preservation System; to establish the Fossil Ridge National Conservation Area and the Bowen Gulch backcountry recreation area; and to release other lands administered by the Forest Service to be managed for multiple use purposes.

BACKGROUND AND NEED

In 1979, after years of analysis, the Forest Service released its second Roadless Area Review and Evaluation (RARE II). Of the 62 million acres of roadless land it studied nationwide, the Forest Service recommended that approximately 15 million acres be designated as wilderness, 11 million acres be studied further and 36 million acres be released for non-wilderness uses. With the completion of RARE II, the Forest Service anticipated that it could finally begin multiple-use management on a significant portion of the vast roadless acreage on the National Forests.

However, a 1982 Federal district court decision, *California v. Block*, held that the environmental impact statement (EIS) accompanying RARE II was inadequate, and once again opened the debate over the National Forest roadless lands. Subsequently, the Forest Service began the process of incorporating detailed wilderness studies of roadless areas into its already complex and much delayed land management planning process.

Seeking a more expeditious resolution to the roadless dispute, Congressional delegations introduced and won passage of individual statewide wilderness bills, which made large additions to the National Wilderness Preservation System and "released", or made available to multiple-use management, the remaining roadless acreage. These bills also insulated the RARE II recommendations in the EIS from further judicial review.

In 1980, Congress enacted a statewide RARE II wilderness bill for Colorado (Public Law 96-560) which designated approximately 1.4 million acres of National Forests lands in the state as wilderness. That law also designated approximately 475,000 acres as Congressionally designated study areas. Additional Congressionally designated study areas had been designated in 1977 by Public Law 95-237 and in 1983 pursuant to Public Law 98-141.

S. 1029 represents the first time that additional National Forest lands would be designated as wilderness for a state which has already enacted statewide RARE II wilderness legislation. The areas to be designated as wilderness by this legislation are the Congressionally designated study areas along with additional lands which although not retained in a formal wilderness study status, have nevertheless retained their wilderness characteristics.

LEGISLATIVE HISTORY

S. 1029 was introduced by Senators Wirth and Brown on May 9, 1991. The Subcommittee on Public Lands, National Parks and Forests held a hearing on the bill on June 18, 1991.

At the business meeting on July 24, 1991, the Committee on Energy and Natural Resources ordered S. 1029, as amended, favorably reported.

COMMITTEE RECOMMENDATIONS AND TABULATION OF VOTES

The Committee on Energy and Natural Resources, in open business session on July 24, 1991, by a majority vote of a quorum present, recommends that the Senate pass S. 1029, if amended as described herein.

The roll call vote on reporting the measure was 18 yeas, 1 nay, as follows:

YEAS

Mr. Johnston
Mr. Bumpers
Mr. Ford
Mr. Bradley
Mr. Bingaman*
Mr. Wirth
Mr. Conrad
Mr. Fowler*
Mr. Shelby*
Mr. Wallop
Mr. Hatfield*
Mr. Domenici*
Mr. Murkowski*
Mr. Nickles*

NAYS

Mr. Wellstone*

Mr. Burns
 Mr. Craig
 Mr. Seymour
 Mr. Craig
 Mr. Seymour
 Mr. Garn

*Indicates voted by proxy.

COMMITTEE AMENDMENT

During the consideration of S. 1029, the Committee adopted an amendment in the nature of a substitute. In addition to making several technical, clarifying and conforming corrections to the bill, the committee amendment addresses the following substantive issues.

The amendment references a new map for the Piedra Wilderness to reflect a boundary modification adding approximately 6,000 acres to the area.

The amendment sets forth detailed management guidelines for the Fossil Ridge National Conservation Area and the Bowen Gulch backcountry recreation area. Those guidelines are explained in the Section-by-Section Analysis, below.

Pursuant to the Bureau of Land Management's recommendations, section 4(a)(2) of the Committee amendment provides for transfer of administrative jurisdiction from the BLM to the Forest Service for several small parcels currently administered by the BLM which are added to larger wilderness areas managed by the Forest Service.

The amendment also clarifies that the denial of a Federal reserved water right applies to all areas designated or established by this Act, including the wilderness areas, the National Conservation Area and the backcountry recreation area.

The amendment does not substantively change the provisions in S. 1029 pertaining to the denial of a Federal reserved water right and release language.

Federal Reserved Water Right

Section 3 of S. 1029, as ordered reported, explicitly denies either an express or implied Federal reserved water right for the wilderness areas, the National Conservation Area, and the backcountry recreation area designated by this Act.

Following a 1985 Federal district court opinion which held that the designation of a wilderness area creates an implied Federal reserved water right (which was later overturned on procedural grounds), the Committee has explicitly addressed the issue of Federal reserved water rights for bills designating wilderness areas. The water rights language adopted by the Committee has varied with each wilderness bill.

Release and Sufficiency Language

"Release" and "sufficiency" are related, but separate, concepts. Release language provides a legislative declaration that lands not included by Congress in a wilderness, wilderness study area, or special management area shall be managed for multiple-used values

in accordance with the forest plans. Sufficiency language is a legislative declaration that the Forest Service review of wilderness issues is legally sufficient and not subject to judicial review.

Since 1983, the same release language has been used in all RARE II wilderness bills. The original "RARE II language" was intended to remove the wilderness question from judicial review and to promote some certainty in resource management. The "RARE II language" precludes judicial review of RARE II decisions, but allows for review of wilderness allocation decisions made on a forest-by-forest basis in subsequent forest plans. However, the forest land and resource management plans, not the RARE II EIS, are now the operative land allocation documents for the National Forests.

The release language in S. 1029, as ordered reported, references the first generation of these land and resource management plans in lieu of the RARE II EIS. This marks the first time that the Committee has reported a wilderness bill using the "updated" release language. With respect to the allocation of lands for wilderness or non-wilderness purposes, the Committee amendment precludes judicial review of the first generation of these forest plans instead of the RARE II EIS. All other elements and aspects of the plans would be subject to judicial review and would not be affected by this language.

SECTION-BY-SECTION ANALYSIS

Section 1 entitles the bill the "Colorado Wilderness Act of 1991."

Section 2(a), paragraphs 1-22, designates the following areas in the State of Colorado as components of the National Wilderness Preservation System:

Proposed Wilderness Area

	<i>Acres</i>
1. Big Blue Wilderness—American Flat Additions	1,470
2. Big Blue Wilderness—Larson Creek Addition	140
3. Buffalo Peaks Wilderness	40,150
4. Powderhorn Wilderness	60,200
5. Mount Zirkel Wilderness—Davis Peak Additions	17,300
6. Greenhorn Mountain Wilderness	22,040
7. Fossil Ridge Wilderness Area	32,000
8. Lost Creek Wilderness Additions	13,830
9. Raggeds Wilderness—Oh-Be-Joyful Addition	5,000
10. Piedra Wilderness	56,000
11. Roubideau Wilderness	18,000
12. Sangre de Cristo Wilderness	207,330
13. Sarvis Creek Wilderness	44,000
14. South San Juan Wilderness Expansion	15,920
15. Hunter Fryingpan Wilderness—Spruce Creek Additions	8,330
16. Byers Peak Wilderness	7,630
17. Tabeguache Wilderness	16,740
18. Vasquez Peak Wilderness	12,300
19. Weminuche Wilderness—West Needle Additions	28,740
20. La Garita Wilderness—Wheeler Additions	23,100
21. Farr Wilderness	12,100
22. Never Summer Wilderness—Bowen Gulch Additions	6,400
Total	648,620

Paragraph (6) designates the Greenhorn Wilderness. The town of Rye lies very near the proposed Greenhorn Wilderness and its resi-

dents are concerned that a forest fire within the wilderness area could threaten their lives and homes unless the Forest Service took adequate measures to prevent and control such a fire. The Committee understands that concern and expects that the Forest Service will develop a fire management plan for the Greenhorn Wilderness in order to best protect the continued health and safety of those who live near the Greenhorn Wilderness. The Committee also notes that section 4 of the Wilderness Act specifically allows the Secretary to take "such measures as may be necessary in the control of fire * * * subject to such conditions as the Secretary deems desirable."

Paragraph (10) designates the Piedra Wilderness. The amendment adopted by the Committee increases the acreage for this wilderness area by approximately 6,000 acres, to 56,000.

Paragraph (15), which adds 8,330 acres to the Hunter-Fryingpan wilderness, makes clear that designation of the additional wilderness lands shall not interfere with the operation of the Fryingpan-Arkansas project.

Subsection (b) directs the Secretary of Agriculture or the Secretary of the Interior, as appropriate, as soon as practicable after the date of enactment of this Act, to file a map and legal description of each wilderness area designated by this Act with the Committee on Energy and Natural Resources of the United States Senate and the Committee on Interior and Insular Affairs of the U.S. House of Representatives.

Section 3(a) contains four Congressional findings with respect to Federal reserved water rights—

1. Virtually all of the wilderness areas designated by this Act are headwaters and pose few, if any, conflicts with existing water users, and that the land management agencies can protect the wilderness areas without express or implied water rights.

2. These headwaters are not appropriate for new water projects.

3. The Piedra Wilderness area is not a headwaters area, but the Secretary of Agriculture and the Colorado Water Conservation Board can contract to protect instream flow filings to protect the water-related resources of the wilderness area.

4. The water-related values of the existing Platte River Wilderness area will be adequately protected by the equitable apportionment decree issued by the United States Supreme Court for the allocation of the North Platte River and its tributaries.

Subsection (b)(1) explicitly denies an express or implied reservation of water or water rights arising from the wilderness designation for the lands designated as wilderness by this Act, the establishment of the Fossil Ridge National Conservation Area, or the establishment of the Bowen Gulch backcountry recreation area.

Paragraph (2) provides that the United States may acquire water rights it deems necessary to carry out its responsibilities on lands designated as wilderness pursuant to the substantive and procedural requirements of the State of Colorado. However, no water rights for these wilderness areas may be acquired through eminent domain.

Paragraph (3) states that no permit for the development of a new water resource facility may be authorized or issued by an officer of the United States for lands designated as wilderness by this Act. The paragraph exempts existing irrigation, pumping, transmission and water facilities within the boundaries of any of the wilderness areas designated by this Act, and also provides for continued operation, maintenance, repair, modification or replacement of such facilities, consistent with subsection (f) of this section. This paragraph removes the President's authority (but only with respect to the wilderness areas designated by this Act) to establish water projects within wilderness areas pursuant to section 4(d)(4) of the Wilderness Act of 1964.

Subsection (c) directs the Secretary of Agriculture to enter into an agreement with the Colorado Water Conservation Board to protect and enforce instream flow filings pursuant to Colorado law, and that no rights shall be asserted for water in the Piedra river for wilderness purposes except those established pursuant to section 37-92-102(3) of the Colorado Revised Statutes. That State statute provides for the protection of instream flows to "preserve the natural environment to a reasonable degree."

Subsection (d) provides that neither the United States nor any other person shall assert rights which may be determined to have been established for waters of the North Platte River for purposes of the Platte River Wilderness established by Public Law 98-550, to the extent such rights would limit the use or development of water within Colorado by present and future holders of valid water rights in the North Platte river or its tributaries.

Subsection (e) clarifies that nothing in this Act shall alter, modify, or append any interstate compact or equitable apportionment decree affecting the allocation of water between or among the State of Colorado and other states, nor the full use and development of such waters, nor the use or development by holders of valid water rights of Colorado's full apportionment of such waters.

Subsection (f) allows reasonable access to operate, maintain, repair or replace existing water facilities within the wilderness areas designated by this Act, including motorized access where necessary and customarily employed on existing routes, provided that such facilities are not increased as a result of these actions.

Subsection (g) provides that nothing in this section shall be construed as establishing a precedent with regard to any future wilderness designations, nor shall it constitute an interpretation of any other Act or any wilderness designation made pursuant thereto.

Section 4 pertains to the administration of the wilderness areas designated by this Act.

Subsection (a)(1) provides that subject to valid existing rights, each wilderness area designated by this Act shall be administered by the Secretary of Agriculture or the Secretary of the Interior, as appropriate, in accordance with the Wilderness Act of 1964 and this Act, except that with respect to wilderness areas designated pursuant to this Act, any reference in the Wilderness Act to the effective date of the Wilderness Act shall be deemed to be a reference to the date of enactment of this Act.

Paragraph (2) transfers administrative jurisdiction to the Forest Service over lands currently administered by the BLM which were added to larger wilderness areas managed by the Forest Service.

Subsection (b)(1) provides that grazing of livestock within wilderness areas designated by this Act shall be administered in accordance with the provisions of section 4(d)(4) of the Wilderness Act, as further interpreted by section 108 of Public Law 96-560.

Paragraph (2) directs the Secretary of the Interior to review all policies, practices and regulations of the Bureau of Land Management administered wilderness areas in Colorado to ensure that such policies, practices and regulations fully conform with and implement the intent of Congress regarding grazing as expressed in this Act.

Subsection (c) makes clear that nothing in this Act shall be construed as affecting the jurisdiction or responsibilities of the State of Colorado with respect to wildlife and fish in Colorado.

Subsection (d) repeals the wilderness study provisions of the 1980 Colorado statewide RARE II wilderness legislation (Public Law 96-550) and the Endangered American Wilderness Act of 1978 (Public Law 95-237).

Subsection (e) states that Congress does not intend that the designation of wilderness areas pursuant to this Act creates or implies the creation of protective perimeters or buffer zones around the wilderness areas, and the fact that non-wilderness activities can be seen or heard from within a wilderness area shall not, of itself, preclude such activities or uses up to the boundary of the wilderness areas.

Section 5 sets forth the release/sufficiency provisions.

Subsection (a) contains Congressional findings.

Subsection (b)(1) provides that reviews of previously designated Congressional study areas in Colorado and the initial forest plans are an adequate consideration of wilderness suitability. The Department of Agriculture shall not be required to review the wilderness option prior to the plan revision which ordinarily occurs on a ten year cycle, or at least every fifteen years, unless the Secretary determines that conditions in a unit have significantly changed.

Paragraph (2) provides that those areas not designated as wilderness (other than the Fossil Ridge National Conservation Area and the Bowen Gulch backcountry recreation area established pursuant to sections 6 and 7 of this Act) shall be managed for multiple use in accordance with land and resource management plans pursuant to section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended by the National Forest Management Act, and those areas need not be managed to protect their suitability for wilderness designation before or during revision of the plans.

Paragraph (3) provides that, if revised forest plans are implemented, areas not recommended for wilderness need not be managed to protect their suitability for wilderness before and during plan revision, and areas recommended for wilderness shall be managed to protect their suitability for wilderness designation.

Paragraph (4) provides that unless expressly authorized by Congress, the Department of Agriculture shall not conduct any further

statewide reviews of roadless forest lands for wilderness suitability in the State of Colorado.

Subsection (c) clarifies that the term "revision" shall not include an amendment to a forest plan.

Subsection (d) provides that this section also applies to roadless lands within the National Forest System in Colorado that are less than five thousands acres.

Section 6 pertains to the establishment and management of the Fossil Ridge National Conservation Area.

Subsection (a) establishes the 43,900 acres Fossil Ridge National Conservation Area in the Grand Mesa, Uncompahgre, and Gunnison National Forests as identified on the referenced map. The conservation area is established in order to conserve, protect, and enhance the scenic, wildlife, recreational, and other national resource values of the Fossil Ridge area.

Subsection (b) directs the Secretary to administer the conservation area in accordance with the provisions of this section and the laws and regulations generally applicable to the National Forest System.

Subsection (c) withdraws, subject to valid existing rights, all lands within the conservation area from entry, appropriation, or disposal under the public land laws, from location, entry, and patent under the mining laws, and from disposition under the mineral and geothermal leasing laws, including all amendments thereto.

Subsection (d) states that no timber harvesting shall be allowed within the conservation area, except for the minimum necessary to protect the forest from insects and disease, and for public safety.

Subsection (e) makes clear that the designation of the conservation area shall not be construed to prohibit or change the administration of livestock grazing within the conservation area.

Subsection (f) prohibits the construction of developed campgrounds within the conservation area. Construction of new roads or trails within the conservation area are prohibited after the date of enactment of this Act.

Subsection (g) permits motorized travel within the conservation area only on designated trails and routes existing as of July 1, 1991.

Section 7 provides for the designation and management of the Bowen Gulch backcountry recreation area.

Subsection (a) establishes the 6,800 acre backcountry recreation area as depicted on the referenced map. The recreation area is located in the Arapaho National Forest.

Subsection (b) directs the Secretary to administer the recreation area in accordance with the provisions of this section and the laws and regulations generally applicable to the National Forest System.

Subsection (c) withdraws, subject to valid existing rights, all lands within the recreation area from entry, appropriation, or disposal under the public land laws, from location, entry, and patent under the mining laws, and from disposition under the mineral and geothermal leasing laws, including all amendments thereto.

Subsection (d) prohibits the construction of developed campgrounds within the recreation area. Construction of new roads or

trails within the recreation area are prohibited after the date of enactment of this Act.

Subsection (e) states that no timber harvesting shall be allowed within the recreation area, except for the minimum necessary to protect the forest from insects and disease, and for public safety.

Subsection (f) provides that motorized level (e.g. snowmobiles) shall be permitted within the recreation area only on designated trails and routes existing as of July 1, 1991, and only during periods of adequate snow cover. Mechanized, non-motorized travel (e.g. bicycles) is permitted at all times within the recreation area.

Subsection (g) directs the Forest Service to develop a management plan for the backcountry during the preparation of the revision to the Land and Resource Management Plan for the Arapaho National Forest.

Bowen Gulch, which lies south of the existing Never Summer Wilderness Area, was considered for designation as wilderness during the RARE II process, but was not so designated and was therefore released for multiple use. After the Forest Service executed a contract in 1988 to log portions of Bowen Gulch, a controversy arose. The Forest Service found that the Bowen Gulch contains significant and valuable stands of old growth trees. After lengthy negotiations, the Forest Service agreed to provide alternative timber of comparable value to the successful bidder. All parties now agree that this area should not be opened to further commercial timber activity.

This legislation will protect the old growth resource in Bowen Gulch, and will also require Bowen Gulch and adjacent lands to be managed for backcountry recreation. Because there is strong support for continued use of portions of this area for winter motorized recreation as well as summer mechanized recreation on designated trails, this legislation will permit these uses to continue. The Committee notes that this legislation will preclude the construction of new roads, but will permit snowmobiling and mountain biking to continue in areas currently open to such uses.

The Committee understands that this provision was developed in cooperation with the Forest Service, and the Committee commends the agency for its work. The Committee is especially pleased with this compromise since it was developed in close coordination with local citizens and local government leaders in Grand County and the town Grand Lake.

COST AND BUDGETARY CONSIDERATIONS

The following estimate of the cost of this measure has been provided by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 30, 1991.

Hon. J. BENNETT JOHNSTON,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 1029, the Colorado Wilderness Act of 1991, as ordered reported by the Senate Committee on Energy and Natural Resources

on July 24, 1991. CBO estimates that enactment of S. 1029 would result in additional costs of \$2 million to \$3 million over the next five years, assuming appropriation of the necessary amounts. Because the bill would not affect direct spending or receipts, there would be no pay-as-you-go scoring under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985.

S. 1029 would designate 650,000 acres of National Forest System land and Bureau of Land Management holdings in Colorado to the National Wilderness Preservation System. An additional two units of federal land totaling 50,700 acres would also be protected under conservation plans that are less restrictive than wilderness designations.

Based on information from the National Forest Service and the Bureau of Land Management, CBO estimates that management costs for creation and execution of wilderness area management plans would total about \$300,000 annually. Surveying and boundary work would range from \$50,000 to \$250,000 per year for up to ten years. There would also be a one-time cost of about \$50,000 for determination of water rights for the Piedra River.

The National Wilderness Preservation System Act stipulates that all timber located in units of the National Wilderness Preservation System be removed from the timber base of the national forest in which it is located. Because most of the land specified in the bill is not currently available for timber harvest, and much of the timber that is available will likely be replaced by timber in other areas, we would not expect there to be a significant reduction in timber receipts over the next five years.

Lands designated as wilderness are also withdrawn from mineral activity under the terms of the National Wilderness Preservation Act. No significant loss of mineral receipts is expected to result from this bill, however, because S. 1029 provides that mineral resources can be removed under valid existing rights. There would be the loss of potential new claims, but that is expected to be minor, because there have been few new mining claims in the affected areas over the past several years.

Enactment of this bill will not impose significant costs on state and local governments.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Theresa Gullo and Michael Buhl, who can be reached at 226-2680.

Sincerely,

ROBERT D. REISCHAUER,
Director.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 1029. The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of S. 1029, as ordered reported.

EXECUTIVE COMMUNICATIONS

On June 6, 1991, the Committee on Energy and Natural Resources requested legislative reports from the Department of the Interior, the Department of Agriculture and the Office of Management and Budget setting forth executive views on S. 1029. These reports had not been received at the time the report on S. 1029 was filed. When the reports become available, the Chairman will request that they be printed in the Congressional Record for the advice of the Senate. The testimony provided by the Forest Service and the Bureau of Land Management at the Subcommittee hearing follows:

STATEMENT OF
JAMES C. OVERBAY, DEPUTY CHIEF
FOREST SERVICE
UNITED STATES DEPARTMENT OF AGRICULTURE

Before the
Subcommittee on Public Lands, National Parks and Forests
Committee on Energy and Natural Resources
United States Senate

Concerning S. 1029, the "Colorado Wilderness Act of 1991"

June 18, 1991

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

I appreciate the opportunity to testify for the Department of Agriculture regarding S. 1029, the "Colorado Wilderness Act of 1991." This bill would designate National Forest System lands in the State of Colorado as components of the National Wilderness Preservation System. Accompanying me today is Tom Thompson, Deputy Regional Forester of the Rocky Mountain Region, headquartered in Denver, Colorado.

Mr. Chairman, we would like to commend the Committee and the Colorado delegation, particularly Senators Tim Wirth and Hank Brown, for their efforts to complete a State-wide wilderness bill for National Forests in the State of Colorado. As you know, the debate over wilderness designation in Colorado has gone on for several years, and the difficulty in resolving the issue has resulted in considerable uncertainty in implementation of Forest Plans in Colorado. Therefore, we strongly endorse your efforts to complete this task. We also appreciate the efforts by the delegation to obtain resource information from our field staff, identify potential resource conflicts, and work to

resolve those conflicts, as this bill was developed. We will continue to cooperate in developing legislation that is acceptable to both the Congress and the Administration.

The Department of Agriculture supports some provisions of S. 1029 and objects to other provisions unless amended as we recommend.

First, I would like to provide some background information and describe in general the basis for our recommendations regarding areas to be designated as wilderness. Second, I will address our position on release language and water rights language. Following that, I will address more specifically our recommendations for each area included in S. 1029.

Proposed Wilderness Areas and Boundaries

There are 14.4 million acres of National Forest System lands in Colorado, of which approximately 2.6 million acres (18 percent) are already designated as wilderness. Acts creating the existing wilderness areas also provided for studies of several additional areas, with recommendations to be made to Congress regarding their suitability as wilderness. The recommendations regarding these areas have been provided either through the Forest Planning process or through separate wilderness studies that were subsequently adopted in the Forest Plans.

Of the wilderness studies required by Congress, all or portions of 10 areas were found to be tentatively suitable for wilderness designation. The study areas and recommended acreages in this category are: Sangre de Cristo (190,629

acres), Greenhorn Mountain (22,300 acres), Piedra (41,500 acres), West Needle (25,053 acres), Vasquez Peak (12,800 acres), Buffalo Peaks (36,060 acres), Spruce Creek (8,000 acres), Cannibal Plateau (13,599 acres), Davis Peak (8,100 acres), and Service Creek (39,860 acres). These recommendations total 401,593 acres.

Significant differences exist between the location of some boundaries proposed in S. 1029 and the recommendations in the Forest Plans. In addition, S. 1029 recommends areas for wilderness which were not recommended in the Forest Plans.

We strongly endorse the wilderness recommendations which match the recommendations in the Forest Plans. We also prefer that designation of new wilderness areas be limited to the recommendations in the Forest Plans, which were developed through an extensive planning process with full public involvement.

At the same time, we feel that resolution of the issue is important, and we would like to continue to work with the Committee and the delegation toward that end. Therefore, we reviewed the additional areas which would be designated by S. 1029 to assess the resource tradeoffs and degree of change from Forest Plan management prescriptions which would result, if the additional areas were designated as wilderness. We do not strongly object to designation of additional areas which have the following characteristics:

- (1) The area is being managed under Forest Plan prescriptions which provide for non-motorized, dispersed recreation opportunities, and basically retain the natural character of the area.

(2) Designation would result in minor resource tradeoffs for such resources as minerals, timber, motorized recreation opportunities, wildlife habitat management opportunities, and activities such as firewood gathering.

(3) The area has a minimum of nonconforming uses, such as mining claims, private land inholdings, water diversions, and roads.

(4) The area has wilderness attributes, opportunities for solitude, and a suitable boundary for management as wilderness.

We recommend against designation of areas which do not meet these criteria.

Release Language

The release language in S. 1029 closely conforms to the standard updated release language developed in 1988 which ties release of areas to the analysis and recommendations in the Forest Plans. We would like to note, however, that this "release" is only until Forest Plans are revised. Some Forest Plans in Colorado are already undergoing revision, so the "release" will be much shorter than the 10 to 15 years envisioned when the standard updated language was developed.

S. 1029 has one difference from the standard updated release language. It does not state that the wilderness evaluation and environmental disclosure of the wilderness evaluation in the Forest Plans is not subject to judicial review.

We recommend that such language be inserted in section 5(b), identical to the language in H.R. 762.

Wilderness Water Resource

We believe decisions involving Federal water rights in wildernesses should be handled on a case-by-case basis, and each wilderness designation should contain a clear expression of the intent of Congress with regard to such water rights.

The Forest Service is responsible for assuring that the water and other resources on National Forest System lands are managed in accordance with applicable legal authority. This authority is derived from numerous statutes, including but not limited to: the Organic Act of 1897, the Organic Act of 1944, the Multiple-Use Sustained-Yield Act of 1960, the Wilderness Act of 1964 and subsequent wilderness acts, the Federal Land Policy and Management Act of 1976, and the National Forest Management Act of 1976.

The Forest Service has several management mechanisms in place to protect water resources in accordance with our management responsibilities. These are: administrative control over placement of water diversion, storage and transmission structures on National Forest System lands; appropriation of water rights under State water laws; reserved water right claims under Federal law; acquisitions of land or water rights; and as a last resort, condemnation of lands or water rights.

With the exception of three areas, the National Forest wilderness areas designated by S. 1029 are at the top of watersheds and encompass the headwaters

of the streams within them, so we can manage the wilderness water resource in these headwaters areas by controlling new water diversions as provided in the Wilderness Act. S. 1029 does not provide authority for even the President to authorize new water diversions, as it would prohibit any officer of the United States from authorizing or permitting development of a new water resource facility in the wilderness areas which would be designated by this bill.

However, in the Piedra, Roubideau and Tabeguache areas, portions of the watersheds lie outside of National Forest System lands, and upstream from the proposed wildernesses. Diversions of water already exist above all three areas, with the potential for additional diversions. Without the water rights to maintain instream flows, it would be difficult for the Forest Service to protect the existing water-related values of these areas. Therefore, we recommend these areas not be designated as wilderness.

S. 1029 would provide for water rights in these three areas through several provisions in section 3. Section 3(c) would direct the Secretary to enter into an agreement with the Colorado Water Conservation Board to protect and enforce instream flow filings under Colorado law for the Piedra area. Such an agreement could meet wilderness water resource needs if it took the form of a binding contract which would assure sufficient water for wilderness purposes and which would prevent the water rights negotiated with the State of Colorado from being changed without the prior consent of the United States. The agreement would need to include the Roubideau and Tabeguache areas, as well as the Piedra area. It would also need to recognize that instream flows only sufficient to meet minimum fishery requirements would not be sufficient for wilderness purposes. Such an agreement would need to be in place before the

bill is passed, as section 3(c) would not compel the State of Colorado to enter into such an agreement.

We believe the Finding in section 3(a)(2) is in error. That subsection states that a contract such as that described in section 3(c) already exists between the Secretary of Agriculture and the Colorado Water Conservation Board. We are not aware of any such contract and recommend that the finding be corrected.

We oppose the provision in section 3(c) which would limit the ability of the United States or any other person from asserting other water rights on the Piedra River. We believe that as a minimum, the United States has reserved water rights established under the Organic Act of 1897. We are currently involved in litigation with the State of Colorado regarding the quantification of rights reserved under the Organic Act.

We support the provision in section 3(h) which would authorize the Secretary to acquire water rights needed for wilderness protection on a willing buyer/willing seller basis, provided that section 3(h) is amended to remove the restrictions on the source and quantity of water which could be acquired and to remove the requirement that the Secretary "shall acquire by purchase" such water rights. As currently written, this section would limit purchase of water rights to the amount already reserved to the United States under the Organic Act of 1897 and thus would seem to require the United States to purchase water rights which have already been reserved.

We do not object to the provisions in S. 1029 which would protect water rights included in existing interstate compacts and which would provide reasonable access to existing water diversion facilities.

Recommendations on Specific Areas

With that background, I would like to briefly address the specific areas which would be designated as wilderness by the bill.

S. 1029 would designate 580,635 acres of National Forest System lands and 60,775 acres of BLM lands as wilderness. The bill also would create two special management areas on National Forest System lands, totaling 50,700 acres.

The bill includes standard administrative provisions concerning State jurisdiction for management of fish and wildlife, buffer zones around wilderness, and grazing. We have no objection to the standard administrative provisions included in the bill. However, with the exception of buffer zones, the provisions are restatements of provisions in the 1964 Wilderness Act and are not needed. Release language and water rights language have been addressed previously in our testimony.

We defer to the Department of the Interior regarding the BLM areas which are included in S. 1029.

We strongly support wilderness designation for the National Forest System areas recommended in the Forest Plans. The following areas which would be designated

as wilderness by the bill are the same as the Forest Plan recommendations: Greenhorn Mountain, Powderhorn/Cannibal Plateau, Spruce Creek, and West Needle (Weminuche).

S. 1029 would designate additional acreage beyond that in the Forest Plan recommendations in the following areas: Buffalo Peaks, Davis Peak, Piedra, Sangre de Cristo, Vasquez Peak, and Service Creek. We do not strongly object to the additional acreage in the Buffalo Peaks, Davis Peak, Sangre de Cristo, and Vasquez Peak areas.

We strongly object to the additional 8,600 acres included in the Piedra area. These additions were released to nonwilderness uses in the Colorado Wilderness Act of 1980 and were allocated in the San Juan Forest Plan primarily to management prescriptions emphasizing wood fiber production and range livestock grazing. Within the last few weeks, the Forest Supervisor of the San Juan National Forest released an environmental impact statement for the Corral Mountain timber sale in the area, which includes harvest of 4.7 million board feet of timber with an appraised value of \$276,000. Approximately \$33,000 have already been expended on environmental studies for this area.

We do not recommend designation of the additional 4,140 acres in the Service Creek area. This additional area was released in Public Law 96-560 and the area has timber potential. We also recommend a minor boundary change in upper Green Creek and upper Service Creek to exclude trail 1108. This change will allow motorized recreation use on the trail to continue.

Section 2(13) provides authorization for the Secretary of Agriculture to acquire land and mineral interests in the Service Creek area, on a willing buyer/willing seller basis. We feel this provision is unnecessary, since section 5(c) of the Wilderness Act of 1964 already provides this authority.

The following areas would be designated by S. 1029 which were not recommended in the Forest Plans: Bowen Gulch, Fossil Ridge, Lost Creek, Oh-Be-Joyful, Roubideau, South San Juan, Tabeguache, Wheeler Geologic, Byers Peak (St. Louis Peak), and Farr (Williams Fork). We would not strongly object to designation of the Bowen Gulch, Roubideau, Tabeguache, and Wheeler Geologic areas, provided our water concerns can be resolved in the Roubideau and Tabeguache areas.

The Forest Plan for the Arapaho National Forest allocated the Bowen Gulch area to management prescriptions emphasizing increased water yields through vegetation manipulation and providing opportunities for ski area development. A timber sale was subsequently prepared in the area and awarded to Louisiana Pacific. Public controversy arose because of the old growth nature of the stands to be harvested and the recreation values of the area. An agreement was recently reached whereby Louisiana Pacific agreed to drop the sale in exchange for timber in other areas. The Forest Service intends to consider future management of the area in a Forest Plan amendment or revision. While we prefer to await the outcome of the Forest Planning process, we do not strongly object to designation of this area as wilderness.

We do not recommend designation of Fossil Ridge, Lost Creek, Oh-Be-Joyful, South San Juan, Byers Peak (St. Louis Peak), and Farr (Williams Fork) areas. These areas are not recommended because of resource tradeoffs, difficulties in

management as wilderness, and/or the presence of existing or proposed nonconforming uses.

Section 2(8) provides authorization for the Secretary to acquire on a willing buyer/willing seller basis the mineral interests of the State of Colorado in the Lost Creek area. We do not feel this provision is necessary since section 5(c) of the Wilderness Act of 1964 already provides this authority. If our recommendations are adopted, acquisition of these interests would not be necessary.

We strongly oppose the designation of special management areas in the bill. S. 1029 would designate approximately 44,000 acres of National Forest System lands adjacent to the proposed Fossil Ridge wilderness as the Fossil Ridge National Conservation Area. This designation would provide management direction emphasizing backcountry recreation, including motorized travel on designated routes. Timber removal would be prohibited and the area would be withdrawn from mineral entry or mineral leasing. We believe that appropriate management direction for the area outside wilderness can be provided through the Forest Planning process. Most of this area (about 25,000 acres) was released to nonwilderness uses in the Colorado Wilderness Act of 1980 and since has been allocated in the Forest Plan to management prescriptions emphasizing wood fiber production, range livestock grazing, wildlife habitat improvement, and both motorized and non-motorized recreation. If this area is retained in the bill, we strongly recommend that language be included to allow silvicultural treatments under emergency conditions, similar to section 4 of the Wilderness Act of 1964.

S. 1029 would similarly designate 6,800 acres of National Forest System lands in the Bowen Gulch areas as a "backcountry recreation area," to provide roadless recreation opportunities and to protect old growth timber stands. Timber removal would be prohibited and the area would be withdrawn from mineral entry. We believe that appropriate management direction for this area can be provided through the Forest Planning process. If this area is retained, we recommend language providing for silvicultural treatments under emergency conditions similar to section 4 of the Wilderness Act of 1964.

The wilderness and special management areas which would be designated by this bill would include a currently planned timber sale totaling 4.7 million board feet with an estimated stumpage price of \$276,000. This creates a "pay as you go" impact of \$276,000 in foregone receipts.

Mr. Chairman, that completes my comments on S. 1029.

In summary, we strongly support the effort to resolve the issues associated with wilderness designation of National Forest System lands in Colorado. We support some provisions of S. 1029. However, we also have some concerns about specific provisions. We would like to continue to work with the Colorado delegation and the Subcommittee to develop legislation that is acceptable to both the Congress and the Administration.

I would be happy to answer your questions.

JUN 18 1991

STATEMENT OF MICHAEL PENFOLD, ASSISTANT DIRECTOR, LAND AND RENEWABLE RESOURCES, BUREAU OF LAND MANAGEMENT, UNITED STATES DEPARTMENT OF THE INTERIOR, BEFORE THE SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS AND FORESTS, COMMITTEE ON ENERGY AND NATURAL RESOURCES, UNITED STATES SENATE ON S. 1029, A BILL "TO DESIGNATE CERTAIN LANDS IN THE STATE OF COLORADO AS COMPONENTS OF THE NATIONAL WILDERNESS PRESERVATION SYSTEM, AND FOR OTHER PURPOSES."

I appreciate the opportunity to appear before you today to present the Department's views on S. 1029, a bill to designate certain lands in the State of Colorado as wilderness.

The Administration supports the concept of designating additional wilderness in Colorado. The Administration believes it would be preferable to allow the Bureau of Land Management's (BLM) wilderness study process to be completed, with the President submitting his recommendations to Congress, as required by law. This process ensures full interagency review. Moreover, such a careful, orderly approach provides the best recommendations for comprehensive wilderness legislation. The BLM's preliminary recommendations are without the takings analyses, departmental or full interagency review that is scheduled to be completed by October 1991.

The bill under consideration here today involves both public lands administered by the BLM and National Forest System lands administered by the Forest Service, Department of Agriculture. My comments relate only to the BLM administered lands. We defer to the Forest Service as to lands under their jurisdiction.

As you know, BLM has been engaged in a comprehensive review of wilderness study areas (WSA's) pursuant to the Federal Land Policy and Management Act of 1976 (FLPMA). Our Wilderness Study Reports for each WSA plus the U.S. Geological Survey and Bureau of Mines mineral reports, public comments, and a statewide overview summary, will serve as the basis for the recommendations that will be submitted to the President this year.

If the President concurs, the Administration's proposal will then be forwarded to Congress for further consideration. This is the process called for in FLPMA and we are proceeding to implement it in the manner Congress set forth. However, if the Congress wishes to act on the BLM lands included in S. 1029, even though the actions required by law are not completed, we offer these comments and preliminary recommendations.

The BLM is studying 54 WSA's encompassing 772,547 acres in Colorado. S. 1029 includes lands in eight BLM WSA's, including the Powderhorn Instant Study Area, that total 73,490 acres. Four of these WSA's are located in the Montrose District of the BLM, and four are in the Canon City District of the BLM. A brief description of the eight units follows.

The Powderhorn Instant Study Area (ISA) is a 55,137 acre study area, adjacent to the smaller Cannibal Plateau Further Planning Area in the Gunnison National Forest. In 1985 the President sent his recommendation to the Congress that 48,115 acres of the BLM Powderhorn ISA be designated as wilderness and recommended 7,022 acres as non-wilderness.

We note that S. 1029 includes both the BLM recommended lands and additional Forest Service land.

American Flats WSA is 4,800 acres bounded on the north and west by Uncompahgre National Forest lands. Part of the Uncompahgre National Forest is in the Big Blue Wilderness. S. 1029 would add 1,470 acres of this WSA to the Big Blue Wilderness. Our preliminary recommendation was that 1,494 acres should be recommended for wilderness status. The addition of these lands would improve the manageability of the wilderness by providing a boundary that is more easily identified than the current BLM-National Forest boundary. The American Flats WSA is commonly used for access to the Big Blue Wilderness and provides outstanding vistas of the Big Blue Wilderness and surrounding wildlands.

Larson Creek WSA is a 900 acre parcel bounded on the west by Uncompahgre National Forest lands part of the Big Blue Wilderness. S. 1029 would add 140 acres of this WSA to the Big Blue Wilderness. Our preliminary recommendation for Larson Creek was that the entire 900 acres should not be designated as wilderness because it would not improve the management of the Big Blue Wilderness.

The 16,740 acre proposed Tabeguache Wilderness Area includes the entire 7,748 acre BLM Tabeguache Creek WSA. The remaining 8,990 acres is in the Uncompahgre National Forest and borders the Tabeguache WSA on the east. Our preliminary recommendation is that the 7,748 acres should be designated as wilderness.

Four small BLM WSA's--Black Canyon, South Piney Creek, Papa Keal, and Zapata Creek--all adjacent to the west side of the Sangre de Cristo National Forest, were studied by the Forest Service and would become a part of that Forest under S. 1029. These four units total approximately 5000 acres. The preliminary BLM recommendation was that 3,300 acres were suitable for designation as wilderness and the lands should be transferred to the Forest Service. The geographic configuration of 1700 acres did not fit within the management boundaries of the areas suitable for wilderness designation. Thus, the remaining portions of these four WSA's not designated as wilderness should be released from the provisions of section 603 of FLPMA.

Grazing Policy Review

Subsection 4(b) of S. 1029 requires that livestock grazing in the newly-designated wilderness areas be managed in accordance with the Wilderness Act and Section 108 of Public Law 96-560 and that a review of grazing policies and practices be conducted. Wilderness areas are continuously under review and monitoring to assure compliance with applicable law and policy. Specific direction to carry out a review is not needed. Likewise, it is not necessary to reiterate that grazing be managed in accordance with the Wilderness Act.

Release Of Lands From Further Study

The release language in S. 1029 does not apply to the BLM as it should. We feel that those BLM wilderness study areas of which a part has been designated as wilderness in S. 1029 should also have specific language releasing the remainder of the WSA from the requirements of Section 603 of FLPMA. We will be happy to provide the necessary language to you.

With the exception of the Powderhorn Wilderness Area and the Tabeguache Creek Wilderness Area, the BLM WSA's involved in S. 1029 are small areas adjacent to larger wilderness areas administered by the Forest Service. We suggest that language be added to S. 1029 that transfers to the Forest Service jurisdiction of those portions of these small BLM WSAs that are designated wilderness. Again, we will be happy to provide the necessary language.

Enactment of S. 1029 would have no pay-as-you-go impact on the BLM under the Budget Enforcement Act of 1990.

This concludes my statement. I will be pleased to answer questions.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill S. 1029, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

PUBLIC LAW 95-237

AN ACT To designate certain endangered public lands for preservation as wilderness, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Endangered American Wilderness Act of 1978".

* * * * *

DESIGNATION OF WILDERNESS AREAS

SEC. 2. In furtherance of the purposes of the Wilderness Act, the following lands (hereinafter referred to as "wilderness areas"), as generally depicted on maps appropriately referenced; dated January 1978, are hereby designated as wilderness and, therefore, as components of the National Wilderness Preservation System—

* * * * *

(e) certain lands in the White River National Forest, Colorado, which comprise approximately seventy-four thousand four hundred and fifty acres, are generally depicted as area "A" on a map entitled "Hunter-Fryingpan Wilderness Area—Proposed", and shall be known as the Hunter-Fryingpan Wilderness. The area commonly known as the "Spruce Creek Addition", depicted as area "B" on said map and comprising approximately eight thousand acres, shall, in accordance with the provisions of subsection 3(d) of the Wilderness Act, be reviewed by the Secretary as to its suitability or nonsuitability for preservation as wilderness. The Secretary shall complete his review and report his findings to the President and the President shall submit to the United States Senate and the House of Representatives his recommendation with respect to the designation of the Spruce Creek area as wilderness not later than two years from the date of enactment of this Act. [Subject to valid existing rights, the wilderness study area designated by this subsection shall, until Congress determines otherwise, be administered by the Secretary so as to maintain presently existing wilderness character and potential for inclusion in the National Wilderness Preservation System.] No right, or claim of right, to the diversion and use of the waters of Hunter Creek, the Fryingpan or Roaring Fork Rivers, or any tributaries of said creeks or rivers, by the Fryingpan-Arkansas project, Public Law 87-590, Eighty-seventh Congress, and the reauthorization thereof by Public Law 93-493, Ninety-third Congress, under the laws of the State of Colorado, shall be prejudiced, expanded, diminished, altered, or affected by this Act. Nothing in this Act shall be construed to expand, abate, impair, impede, or interfere with the construction, maintenance, or repair of said

Fryingpan-Arkansas Project facilities, nor the operation thereof, pursuant to the Operating Principles, House Document Numbered 130, Eighty-seventh Congress, and pursuant to the water laws of the State of Colorado;

* * * * *

PUBLIC LAW 96-560

AN ACT To designate certain National Forest System lands in the States of Colorado, South Dakota, Missouri, South Carolina, and Louisiana for inclusion in the National Wilderness Preservation System, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I

STATEMENT OF FINDINGS AND POLICY

* * * * *

SEC. 105. (a) * * *

* * * * *

[(c) Subject to valid existing rights, the study areas designated by subsections (a) and (b) of this section shall, until Congress determines otherwise, be administered by the Secretary of Agriculture so as to maintain their presently existing wilderness character and potential for inclusion in the National Wilderness Preservation System: *Provided*, That with respect to grazing of livestock and oil, gas, or mineral exploration and development activities, such study areas shall be administered according to the laws generally applicable to the National Forest System.]

SEC. 106. (a) * * *

* * * * *

[(b) Subject to valid existing rights, the Oh-Be-Joyful Wilderness Study Area shall be administered by the Secretary of Agriculture so as to maintain its presently existing wilderness character and potential for inclusion in the National Wilderness Preservation System: *Provided*, That such management requirement shall not extend beyond a period of two years from the date of submission to Congress of the President's recommendation that such area be designated as wilderness, or beyond the date of submission to Congress of the President's recommendation that such area not be designated as wilderness: *Provided further*, That, with respect to oil, gas and mineral exploration and development operations in such study area, the terms of the Wilderness Act of 1964 shall apply.]

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